

## **FINAL**

**Mayor and City Council of New Castle  
Council Meeting  
New Castle Town Hall—Delaware Street—New Castle  
Tuesday, December 9, 2003—7:00PM**

### **Roll Call**

**Present:** President Castagno Councilman DiAngelo  
Councilwoman Miller Councilman Padmalingam  
Councilman Reese

**Others present:** Treasurer Janet Carlin, City Attorney Hearn, City Administrator Bob Martin, Police Chief McDerby, Public Services Manager Jim Weldin,

President Castagno convened the meeting at 7:10 PM and led those assembled in the pledge of allegiance.

### **Approval of Committee Reports**

President Castagno called for approval of committee reports. Councilwoman Miller moved to accept the committee reports as written. Councilman Reese seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the minutes. The motion carried.

### **Approval of Treasurer's Report**

Treasurer Carlin reported that as of November 30, 2003, petty cash totaled \$270.00. Cash in Wilmington Trust accounts totaled \$228,735.49; monthly deposits totaled 91,845.60; CDs and the Government Investment Pool totaled \$674,184.77. Total cash on hand equaled \$902,920.26. Councilman Reese moved to accept the treasurer's report as presented. Councilman DiAngelo seconded the motion. Councilwoman Miller, Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the Treasurer's report. The motion carried.

### **Approval of Minutes by Date**

Councilman DiAngelo called for a vote to accept the minutes of November 9, 2003. Councilman Reese moved to accept the minutes as written. Councilman Padmalingam seconded the motion. Councilwoman Miller, Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the minutes. The motion carried.

### **Communications**

There were no communications presented.

### **Business from the Floor**

President Castagno called for comments specifically related to agenda items. **Ned Hutchinson** complained that although on the surface Resolution 2003, Amended Chapter 140, seems reasonable, it actually favors renters. He noted that Chapter 140 has the potential to violate the Constitution's stricture against search and seizure because it permits a Code Enforcement Officer to enter a property without probable cause. President Castagno asked him to hold his comments until the relevant agenda item was discussed.

### **Business from the Mayor**

There was no business from the Mayor.

### **Business from the City Administrator**

City Administrator Martin reported on the following.

Comcast Cable Communications has changed its FCC rate filing date to November 1, 2004. As a result Comcast's revised charges for customer service, installation and associated equipment will be delayed. The new pricing structure will go into effect on February 1, 2005.

The New Castle Flower Beautification Committee minutes reported on for future projects, including landscaping for the Police Station and the Municipal Building.

A letter from Former Solicitor Gerard P. Kavanaugh advised that Judge Carpenter had denied the Healy's petition to carve a thirty-foot setback out of 112 The Strand. Both the Historic Area Commission and the Board of Adjustment had earlier denied the request. The judge's decision was based on the fact that the Healy's no longer own the property and that "they failed to join Mr. Macie, the property owner at the time of the appeal."

Christmas festivities for A Day in Old New Castle on Saturday, December 13, 2003, will begin at 11:00 AM and end at 4:30 PM with the Christmas tree lighting ceremony. Ms. Marie Moran of Rogers Manor donated the tree.

City Administrator, Councilwoman Miller and Chip Paterson met with a representative of Comcast Cable to discuss a franchise agreement. They expect to have something to report by the January meeting.

Gary Gredell of Gredell and Associates notified the City about the horizontal alignment of the railing. He advised that the wharf's concrete parapet is poorly aligned and that the "riverward or east wall drifts outward 6 inches at the center relative to the flaking corners." If the railing alignment is to be straight, the parapet cannot be used for seating. Mr. Gredell believes that seating is less important than the appearance of the railing.

Delaware's Department of Transportation asked that Mayor Klingmeyer sign and return four copies of a proposed agreement to transfer \$89,000 to the City of New Castle. The money is to be used for paving.

### **Business from the Council President**

**Resolution 2003: Honoring Immanuel Episcopal's 300<sup>th</sup> Anniversary.** President Castagno introduced Father Edward Godden, Rector of Immanuel Episcopal Church, and briefly summarized the church's history from its beginnings in 1689. He also recognized the church's current contributions to the community and called for a motion on the resolution. Councilwoman Miller moved to accept the resolution; Councilman Reese seconded the motion. Councilwoman Miller, Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the resolution. The motion carried unanimously.

Presented Castagno then presented Father Godden with the resolution. Following a round of applause, Father Godden thanked the Council and expressed gratitude that he lives in an area where the American ideal of people working together was born. He expressed gratitude for his congregation and for the townspeople. Robert Mayer, a past warden of the church, accompanied him.

### **Unfinished Business**

**Third Reading of Ordinance 423: Amending Chapter 140, Housing Standards:** President Castagno asked Mr. Weldin and Councilman DiAngelo to summarize the changes incorporated in Chapter 140 as a result of the public hearing in November. He also asked City Attorney Hearn to explain whether or not the City has the right to enter a domain to enforce the amended ordinance. Mr. Hearn replied that the City does have the right to enforce the ordinance. Owners of residences in violation of city codes can be fined if repairs are not made in a reasonable time. Violations are considered to exist if a resident's health or safety is involved.

Councilman DiAngelo asked if the City must get permission from the owner to enter a rental. Mr. Hearn replied that a tenant can invite in anyone he/she wishes.

President Castagno explained that Chapter 140, Sections 37 and 38 deal with rentals. The proposed business fee for rentals is as follows. From 1 to 4 units, the charge would be \$15.00; from 5 to 8, the charge would be \$30.00; from 9 to 50, the charge would be \$50.00, with a \$3.00 fee for each house above 50. For example, an owner of 55 units would pay \$50.00 plus \$3.00 for each unit over 50, making the total fee \$65.00.

Councilman DiAngelo asked if the landlord of a rental unit must be notified before the residence can be inspected. Mr. Hearn emphasized that only in an emergency can the City act without the tenant's invitation. Councilman DiAngelo then expressed concern that the ordinance would be like Newark's ordinance, which has annual inspection or re-inspection when a new tenant rents the property. Mr. Hearn reiterated that the New Castle's code enforcer would inspect a property only when a tenant complains and only after the landlord has been notified. Once a problem has been corrected, there is no violation. He emphasized that the tenant has to contact the landlord before notifying the Code Enforcement Officer. Possible ways of notifying a landlord include

regular mail, certified mail, and telephoning. Mr. Weldin stated that certified letters take too long since few problems can wait and a certified letter can take up to 10 days to be delivered. Add to that the time the landlord has to correct the problem, and a relatively simple problem could become serious.

**John Houben** of Washington Park asked how the Code Enforcement Officer could validate whether or not the tenant has notified the landlord. Mr. Hearn said that a receipt for certified letter would constitute proof. Also, the code enforcement officer could contact the landlord, find out if the problem has been fixed. In all cases the responsible person would be notified and a reasonable time allowed to eliminate the problem.

Councilwoman Miller asked if the Code Enforcement Officer could take action if a complaint has not been registered. Mr. Hearn noted that a Code Enforcement Officer can act in the case of an apparent violation, as a policeman can act to stop a theft in progress. Councilwoman Miller asked if missing windows would precipitate such action. Mr. Weldin responded that a falling wall that threatened the public's safety would constitute an emergency situation and obviously require enforcement.

Councilwoman Miller expressed a hope that the Deemer property would be developed.

**Ned Hutchinson** acknowledged that the ordinance is well written and reasonable, but that the code does not state that the tenant must notify the landlord before the Code Enforcement Officer takes action. He complained that a landlord could be harassed. He cited tenants who do not pay fuel bills, then live in a few rooms with heat from portable heaters, thus creating a dangerous situation. Councilwoman Miller advised that Chapter 140-27 covers such situations. President Castagno warned that under the present ordinance, if a tenant complains, the Code Enforcement Officer could take action without notifying the owner. Under the proposed ordinance, the landlord must be notified.

Mr. Martin revealed that because the City is not strict about the payment of business licenses, (some of which were not paid until November), landlords would have plenty of time to comply with the code.

**Tom Whitehead** protested that the City does not consider a landlord's rights. Like Mr. Hutchinson, he wants a compromise to satisfy landlord concerns. He asked how a tenant was to contact a landlord and if a complaint could be issued before a landlord was notified. Mr. Weldin replied that under the current code, a landlord can be fined without notification as the result of a tenant complaint. Under the new code, he could not. In addition, Mr. Whitehead questioned the fairness of the January 1, 2004, due date for the payment of business licenses.

**Mr. Hutchinson** also took exception to the January 1, 2004, due date for payment of business license fees. He asked if people would be fined if they did not pay by then. Councilman DiAngelo suggested extending the due date for this year for 30 or 60 days.

President Castagno asked if a rental registration process had been devised. Mr. Weldin suggested a policy for notifying owners about the business fees required. The registration process would involve sending a letter, followed by a phone call if the letter did not get results.

President Castagno asked Mr. Hearn whether the issues raised should be handled at a legislative level or a policy level. Mr. Hearn advised that such issues could be better addressed at a policy level since policy can change as circumstances change. The Code Enforcement Officer can determine whether or not a problem exists. Jeffrey Davis agreed that putting procedures into an ordinance is a bad idea. He also expressed concern that the discussion was too focused on notification and other incidentals. Mr. Hearn noted that so much detail is unusual in an ordinance. Because the ordinance is so complex, Councilman DiAngelo advised against passing the ordinance just to get it done. President Castagno asked Mr. Weldin to modify the Chapter to make it easier to understand. Mr. Weldin is writing a policy manual.

Police Chief McDerby recommended giving landlords a moratorium on the January 1, 2004, date and reinstating the January date for subsequent years, beginning January 1, 2005. Mr. Hearn agreed that a moratorium is a good idea. Councilman DiAngelo suggested passing the ordinance and modifying it at the next meeting. President Castagno reminded him that three more hearings would have to be held.

Councilman DiAngelo summarized the changes to be made to Chapter 140. Mr. Weldin read a modified version of the Chapter.

President Castagno called for a motion to accept Chapter 140 as modified. Councilman DiAngelo moved to adopt the amended Chapter 140 as modified. Councilwoman seconded the motion. Councilwoman Miller, Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the resolution as amended. The motion carried unanimously. Councilman DiAngelo read a summary of the code, which is on file in the City office.

Councilman Reese suggested voting separately on Chapter 140-37, Section B. Councilman DiAngelo moved to accept the chapter. Councilwoman seconded the motion. Councilwoman Miller, Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the chapter. The motion carried unanimously. A copy of the amended Chapter 140 is attached.

### **New Business**

**Recommendation for Fourth and Chestnut Streets:** President Castagno read a letter from Jim Steele of the Planning Commission concerning the rezoning of the property at Chestnut and Fourth Streets from Service Commercial (SC) to Open Space and Recreational (OS&R). The property is located at the site of the old City garage. The City would retain ownership.

The Commission recommended using the property as an additional parking area. A concept of the planned facility and its landscaping was distributed. Mr. Martin explained that only the paved area would become a parking lot. The grassed area would be landscaped.

Councilman DiAngelo was concerned about the ownership issue. He noted that at first the Trustees wanted the property back, but now they are willing to give it to the City. He learned that the Trustees do not want the property back. Rather they want first right of refusal if the property is ever sold. Councilwoman Miller asked how residents would be affected and if they would have parking permits.

Councilman Reese moved to accept the Planning Commission's recommendation; Councilman Padmalingam seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese voted to accept the recommendation. The motion carried unanimously.

**Resolution 2003-13 Park Equipment Safety:** Councilman Padmalingam read the one-page resolution in its entirety. The resolution details the standard operating procedures "to protect and preserve its unsupervised public playground facilities." The resolution then stated the measures necessary to conform to the provisions recommended by the Playground Safety Policy revision of 2002, as determined by the Consumer Products Safety Handbook and the American Society for Testing Materials Standards. He reminded the Council that Mr. Weldin had attended a playground safety certification course that makes him well qualified to implement the necessary changes. All playgrounds will be involved. Public Service personnel will inspect, repair or replace defective equipment in a timely manner.

Councilman Reese moved to accept the resolution. Councilman Miller seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese voted to accept the resolution. The motion carried unanimously.

**Resolution 2003-20: Support of Scenic Route 9:** President Castagno read the resolution for nominating Route 9 to the State Scenic and Historic Highway Program. The scenic route will stretch from the City of New Castle to the John Dickinson Plantation and St. Joe's river preserve. Route 9's inclusion in the highway will "highlight the history and beauty of this unique landscape." President Castagno was part of the Steering Committee. Councilwoman Miller moved to accept the resolution. Councilman Reese seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese voted to accept the resolution. The motion carried unanimously. Mr. Martin will ask Jean Williamson to send a copy of the resolution to Tim Plemmons of Delaware Greenways.

**Resolution 2003-19: Amending the City Charter:** Councilwoman Miller announced that the goal of the committee was to devise a comprehensive plan for modifying and updating the Charter. She noted that the last committee worked for a year without effecting any changes. The current committee consists of elected City officials, residents, City staff members, and the City Solicitor. They hope to have an improved charter in one and a half years. The initial changes were designed to avoid controversy. Some of the changes to be made include:

- References to gender will be eliminated.
- References to *constable* will be changed to *police officer*.
- The provision that calls for the tax collector to spend three nights in the City office to answer tax questions will be eliminated.

- Section 29: In naming members of the Annexation Committee, each Council member will have one appointment. The Mayor will have two appointments. Previously, the Council recommended all Annexation Committee members.
- Section 16 dealing with the regulation of pavements and streets, for example, will be eliminated since these are now the County's responsibility.
- In Section 19, Paragraph 2 concerning outdoor trash compactors has been deleted.
- The City may appoint two people to assist the Council.

**Ned Hutchinson** recommended taking out the tax on trolley cars. He also asked who decided that the Mayor gets two votes. Councilwoman Miller revealed that she, the Mayor, and the City Attorney did. **David June** requested removing any provision for "anyone appointing anyone." He wants all positions to be determined through election. **Mr. Houben** asked if the Charter could be changed without approval from the State legislature. Mr. Hearn replied that the revised Charter must be sent to the General Assembly, and then it must pass the Assembly by a two-thirds vote. If the resolution passes, the governing body will contact the local legislator.

Councilwoman Miller believes that if the Committee approves the first phase, the revision will go more quickly.

Councilman Reese moved to accept the resolution for amending the City Charter with changes noted. Councilwoman Miller seconded the motion. Councilman Reese suggested a roll call vote. Councilman DiAngelo voted yes; Councilwoman Miller voted yes; Councilman Padmalingam voted yes; Councilman Reese voted yes; President Castagno voted yes. The motion passed unanimously.

**Authorization for Mayor to Sign Suburban Street Aid:** Councilman DiAngelo read a letter dated December 4, 2003, addressed to Mayor Klingmeyer from Earle Timpson of the Department of Transportation. The letter proposed to transfer \$89,000 from DelDot to the City of New Castle to fund paving projects. The Mayor must sign and return four copies. Councilman DiAngelo revealed that 21 streets need repaving.

President Castagno called for a resolution to authorize the Mayor to sign and return the necessary copies. Councilman DiAngelo moved to accept the resolution. Councilman Reese seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese voted to accept the resolution. The motion carried unanimously.

**Bank Resolution: To Pay for Work on Police Building:** President Castagno called for a resolution to pay Mike Miklus, III, Inc., for work on the Police Building Site from September 1, 2003, to November 6, 2003. Councilwoman Miller moved to accept the resolution. Councilman Reese seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese voted to accept the resolution. The motion carried unanimously.

**Recommendation for Bond Referendum Date:** President Castagno called for a discussion of the optimum time for the bond election. Councilwoman Miller suggested February 2 or 21, 2003.

Councilman DiAngelo again asked whether or not the City could afford the bond. He suggested attaining firm figures on the cost of parks, streets, and drainage before committing to a bond issue. President Castagno and City Administrator Martin said that after a stringent review of the City's finances, they determined that the City would have no trouble repaying the Bond. However, President Castagno agreed that providing more information would make people more willing to accept the bond issue.

President Castagno also revealed that a drainage study had been done, and the figure arrived at was \$700,000. Councilman DiAngelo said that \$300,000 for Washington Park drainage had been estimated, but the figure only covered work up to a point. Beyond that, no estimated had been done. He questioned the need to allot \$250,000 for City parks, especially since the Trustees are responsible for Battery Park. He advised consulting the Trustees on their willingness to contribute to the cost of improving the parks and the wharf railing. President Castagno asked Councilman DiAngelo to work with the City Administrator to assemble details on the planned projects.

**Mr. Whitehead** asked if it is legally possible to include a tax-raise option. He maintained that the cost to a homeowner would be negligible. **Mr. Houben** guessed that a homeowner's cost would be approximately \$120.00. He later amended his estimated to \$5.00 a month for a \$60,000 house.

#### **Comments from the Floor**

The comments from the floor dealt with the bond issue. **John DiMondi** questioned the Council's outlay of \$2,000,000 for a police station when the City has so many problems. **David June** expressed concern about what will happen to the City's expanded services when State money runs out. He fears that City residents will be saddled with debt. He wants the City to help residents understand the issues and to have a voice in the City's plans to spend money. President Castagno explained that a referendum will do this. **Ned Hutchinson** asked if there has been an official audit this year, and if so, is the City in debt. Councilwoman Miller assured him that the City is not in debt, and suggested that he obtain a copy of the audit.

Councilman Reese noted that Washington Park has had drainage problems for 30 years and that the City will never have \$700,000 to pay for eliminating them. Thus, a bond issue is the only solution.

Councilman Padmalingam counseled setting priorities. Eliminating the drainage problem in Washington Park should be a major priority. He observed that most problems start as small problems and develop into big ones if they are not attended to. For example, the drains on Seventh Street do not work. As a result, ice accumulates, causing hazardous conditions. Both he and Councilman DiAngelo want to identify the source of the money to pay the bond before making a commitment.

President Castagno urged the Council members to work with the City Administrator to learn more about the City's finances.

**Mr. Whitehead** and **Charlotte Houben** of Washington Park both recommended raising taxes rather than putting the City in debt. Ms. Houben complained that few know enough to make an informed choice. She advised borrowing \$1,000,000 and raising taxes to acquire the rest. She noted that taxes haven't been raised for ten years.

**Ned Hutchinson** estimated that the City owes the Trustees \$1,900,000 for the Police Station. He wondered how the City could pay both that debt and the cost of the bond. He complained that because the Municipal Service Commission gives the City \$400,000 a year, he is being over-charged for his utilities.

**Mr. Houben** observed that Councilman Reese quoted \$700,000 and Mr. Martin quoted \$300,000 for drainage repairs in Washington Park. He wants firm figures as a basis for making a decision. President Castagno explained that the numbers must first be clarified through an engineering study and then put out to bid since sending something out to bid before having money doesn't make sense.

### **Meeting Adjourned**

President Castagno called for a motion to adjourn the Council meeting and to go into an Executive Session. Councilwoman Miller moved to adjourn the meeting and to go into an executive session; Councilman Reese seconded the motion. Councilwoman Miller and Councilmen DiAngelo, Padmalingam, and Reese all voted to accept the motion. The motion passed unanimously. The meeting adjourned at 8:45 PM.

### **Next Meeting**

The next regular meeting will be held at 7:00 PM on January 13, 2004, in the Town Hall.

Respectfully submitted,

Darcy Mozer, City Clerk